

# Policy



## Assignment

<b>Responsible Officer:</b>	ACE Neighbourhoods
<b>Approved:</b>	May 2018
<b>Review Date:</b>	May 2020
<b>Regulatory Framework:</b>	Tenancy Standard
<b>Scope:</b>	Group Wide

## Assignment Policy

### 1.0 Introduction

- 1.1 Reference to 'Incommunities/Incommunities Ltd/the landlord/our/we' in this policy shall be deemed to apply to Group subsidiaries as appropriate unless specified otherwise.
- 1.2 All references in this Policy to sections and schedules of Acts of Parliament are to be regarded (unless we decide otherwise) as including references to those sections and schedules as amended, varied, replaced or re-enacted from time to time.
- 1.3 Assignment takes place when the tenant ("the Assignor") assigns the tenancy to someone else ("the Assignee")
- 1.4 This policy covers the three circumstances when Incommunities will consider applications to assign a tenancy;
  - **Property Transfer Orders**, when a Property Transfer Order has been made by the Court eg. Under Section 17 of the Matrimonial Causes Act 1973, Section 17 of the Matrimonial and Family Proceedings Act 1984 or Schedule 1 of the Children Act 1989
  - **Potential Successor**, where the person to whom the tenancy is to be assigned is a potential successor
  - **Mutual Exchange**, where a mutual exchange has been agreed between the tenants and approved by the Landlord

### 2.0 Policy Statement

- 2.1 Incommunities aims to provide a fair and efficient service when processing assignments by:
  - Meeting its statutory obligations
  - Making the most efficient use of its available housing stock
  - Applying best practice
  - Assisting tenants seeking alternative accommodation through exchanges with other registered providers.

### 3.0 Policy

#### Property Transfer Orders

- 3.1 Where a Court has issued a property transfer order as a result of proceedings under any of the the Acts listed in 1.4, Incommunities will alter the tenancy records in accordance with the Order of the Court and on receipt of the Original Order or a certified copy of that Order.
- 3.2 The sealed order should be kept with the Tenancy Agreement as a record of the reason the tenancy was altered.

- 3.3 The right to assign a person's tenancy cannot be used to add a person to the tenancy as an additional joint tenant or to assign a joint tenancy to a sole tenant. Altering a joint tenancy to a sole tenant will only be carried out following the requirement of a Property Transfer Order/Court Order.

### **Potential Successors**

- 3.5 Incommunities will consider applications made by tenants who wish to assign their tenancy to another person who is a potential successor to their tenancy. A potential successor is a person who is eligible to succeed the tenancy in the event of the death of the tenant, in accordance with the Incommunities Succession Policy.
- 3.6 Assignments in this category will not be accepted where the tenant is transferring to another property which is owned and managed by Incommunities. Examples of where assignments in this category may be accepted are when the tenant is moving outside the district, including moving abroad, has bought their own property or is moving into a nursing home. Incommunities will consider each assignment request in this category on an individual basis in line with the law as it stands at the time.
- 3.7 Once a request for an Assignment of a tenancy to a potential successor has been received, we will consider any breaches of tenancy including (but not limited to) arrears, outstanding gas servicing, possession orders or other Court relevant to the tenancy as well as the circumstances of the request. If the request for an Assignment is approved, the Deed of Assignment must be completed by the relevant member of staff and signed by both the Assignor and the Assignee.
- 3.8 Incommunities Succession Policy provides all the relevant criteria in respect of those persons entitled to succeed a person's tenancy.

### **Mutual Exchange**

- 3.9 Assured tenants have the right to apply to assign their tenancy to another tenant by way of an exchange with one other tenant (a "direct exchange") or by exchanges involving more than one tenant (an "indirect exchange"), but all of the following conditions must be met :
- a) Every tenant taking part in the exchange must satisfy the conditions in section 92 of the Housing Act 1985.
  - b) Where required under their tenancy agreement, every tenant must have the written consent of their landlord to the assignment of their tenancy to our tenant or to another tenant who satisfies the conditions in 3.9 (a).
  - c) Our prior written consent must be obtained.
  - d) Any reasonable conditions which are attached to the consent about the payment of outstanding rent, the remedying of a breach or the performing of any obligation under the tenancy agreement must have been complied with.
  - e) A mutual exchange can take place between more than two tenancies. An example of this is where tenant A seeks to assign their tenancy to tenant B, tenant B seeks to assign

their tenancy to tenant C and tenant C seeks to assign their tenancy to tenant A. In these circumstances, all tenants involved must satisfy all conditions in section 3.9.

- 3.10 Assured furnished tenants have the same rights as assured tenants, but tenants taking over the tenancy by way of mutual exchange must take on the furniture and related charges as may be present. The departing tenant leaves this furniture behind as it is tied in with the tenancy that they are assigning.
- 3.11 In the event of mutual exchange without landlord consent we will treat the occupants as unauthorised occupiers.
- 3.12 Assignments under this category will not be authorised where any of the grounds for withholding consent provided under Schedule 3 of the Housing Act 1985, as amended, are met by either of the exchange partners (ie. the tenant and assignee).
- 3.13 Our consent will not be unreasonably withheld. We can only withhold consent under any of the grounds listed in Schedule 3 of the Housing Act 1985.
- 3.14 We may give our consent subject to a condition or conditions which must be satisfied before the consent is effective. Any conditions must be reasonable. Reasonable conditions include, but are not limited to:
  - a) A requirement that any arrears of rent, service charges, legal costs or any other items recharged to the account of any participating tenant must be discharged before the assignment may take place.
  - b) A requirement that any breach of the tenancy shall be remedied.
  - c) A requirement that any obligation of the tenancy shall be complied with, this may include a condition that any repairs which are required to any property involved in the exchange are carried out and, if the costs are rechargeable to the tenant the costs are discharged.

## **4.0 Service Standards**

- 4.1 Except where a Property Transfer Order has been made by a Court, the power to grant permission to assign can only be given by a Neighbourhood Manager/Housing Services Team Leader; who will also ensure that all tenants involved are fully aware of any changes to their tenancy and rights as a result of the assignment.
- 4.2 Tenants holding Assured Shorthold (Fixed Term) Tenancies for a period of two years or more shall have the full rights of this policy
- 4.3 We will grant or refuse the exchange within 42 days of receiving the application. This decision shall be in writing.

## **5.0 Appeal**

- 5.1 Applicants wishing to assign their tenancy who have had their application refused will have the right to appeal against that decision within 10 days of the date that the decision letter was sent. The appeal should be made in writing. A Neighbourhood Director, other appropriate Head of Service or a delegated

individual (such as a Neighbourhood Manager), with advice from legal services if required, will review the decision within 10 working days of the appeal request. All relevant information will be sought and taken into account. If the application cannot be resolved by the Director the appellant will have the right to appeal to a panel of members of the Community Trust Panel who will review the decision.

## **6.0 Monitoring**

- 6.1 Relevant Managers will periodically analyse the information collected for the reports to ensure that staffs' activities are in line with this policy and to recommend any improvements/changes in policy, to the Senior Leadership Team and the Board where necessary.

## **7.0 Review**

- 7.1 There will be an automatic review of this policy whenever there is a change of statutory or regulatory provisions, or when other information becomes available that will impact on this policy. In any event there will be a substantive review of this policy every three years.
- 7.2 In addition, the policy and accompanying procedures will be subject to on-going scrutiny and operational review, in consultation with all relevant stakeholders and with regard to feedback obtained by virtue of customer involvement.

## **8.0 Related Documents**

- Incommunities Assignment Checklist and Procedure
- Incommunities Mutual Exchange Checklist and Procedure
- Incommunities Succession Policy
- Incommunities Equality & Diversity Policy
- Incommunities Ltd Tenure & Starter Tenancy Policy
- Sadeh Lok Tenure & Starter Tenancy Policy
- Incommunities Complaint Handling Policy

